

## Bureau of Land Management, Interior

## § 3714.3

shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

- (1) The date of location;
- (2) The book and page of the recordation of the notice or certificate of location; and
- (3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

### § 3714.2 Waiver of rights by mining claimants.

Section 6 of the Act provides as follows:

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims. The execution and acknowledgement of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this Act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

### § 3714.3 Protection of existing rights; exclusion of reservation in patents.

The Act in section 7 provides as follows:

Nothing in this Act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as

such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this Act, or as a result of a waiver and relinquishment pursuant to section 6 of this Act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the Act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of § 3712.2-7, to file a verified statement in response to a published notice as provided in section 5(b) of the Act and § 3712.2-9; (b) it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the Act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

## Subpart 3715—Use and Occupancy Under the Mining Laws

AUTHORITY: 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

SOURCE: 61 FR 37125, July 16, 1996, unless otherwise noted.

**§ 3715.0-1 What are the purpose and the scope of this subpart?**

(a) *Purpose.* The purpose of this subpart is to manage the use and occupancy of the public lands for the development of locatable mineral deposits by limiting such use or occupancy to that which is reasonably incident. The Bureau of Land Management (BLM) will prevent abuse of the public lands while recognizing valid rights and uses under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*) and related laws governing the public lands, regardless of when those rights were created. BLM will take appropriate action to eliminate invalid uses, including unauthorized residential occupancy of the public lands.

(b) *Scope.* This subpart applies to public lands BLM administers. They do not apply to state or private lands in which the mineral estate has been reserved to the United States. They do not apply to Federal lands administered by other Federal agencies, even though those lands may be subject to the operation of the mining laws.

(c) This subpart does not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers.

**§ 3715.0-3 What are the legal authorities for this subpart?**

The authorities for this subpart are 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

**§ 3715.0-5 How are certain terms in this subpart defined?**

As used in this subpart the term:

*Mining laws* means all laws that apply to mining of locatable minerals on public lands and which make public lands available for development of locatable minerals. This includes, but is not limited to, the general authorities relating to mining of locatable minerals or to the public lands on which this subpart is based and case law which interprets those authorities.

*Mining operations* means all functions, work, facilities, and activities reasonably incident to mining or processing of mineral deposits. It includes building roads and other means of ac-

cess to a mining claim or millsite on public lands.

*Occupancy* means full or part-time residence on the public lands. It also means activities that involve residence; the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes; or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

*Permanent structure* means a structure fixed to the ground by any of the various types of foundations, slabs, piers, poles, or other means allowed by building codes. The term also includes a structure placed on the ground that lacks foundations, slabs, piers, or poles, and that can only be moved through disassembly into its component parts or by techniques commonly used in house moving. The term does not apply to tents or lean-tos.

*Public lands* means lands open to the operation of the mining laws which BLM administers, including lands covered by unpatented mining claims or millsites.

*Prospecting or exploration* means the search for mineral deposits by geological, geophysical, geochemical, or other techniques. It also includes, but is not limited to, sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present.

*Reasonably incident* means the statutory standard "prospecting, mining, or processing operations and uses reasonably incident thereto" (30 U.S.C. 612). It is a shortened version of the statutory standard. It includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or benefit a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.

*Substantially regular work* means work on, or that substantially and directly benefits, a mineral property, including

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nearby properties under your control. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It may also include assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of §§ 3715.2 and 3715.2-1. It may also include off-site trips associated with these activities. The term also includes a seasonal, but recurring, work program.

*Unnecessary or undue degradation*, as applied to unauthorized uses, means those activities that are not reasonably incident and are not authorized under any other applicable law or regulation. As applied to authorized uses, the term is used as defined in 43 CFR 3802.0-5 and 3809.0-5.

[61 FR 37125, July 16, 1996, as amended at 62 FR 59822, Nov. 5, 1997]

### § 3715.0-9 Information collection.

(a) BLM has submitted to the Office of Management and Budget the infor-

mation collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995 and assigned clearance number 1004-0169. BLM collects the information so that it may manage use and occupancy of public lands under the mining laws by prohibiting unauthorized uses and occupancies. A response to BLM is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

(b) BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW-110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225-0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0169, Washington, DC 20503.

### § 3715.1 Do the regulations in this subpart apply to my use or occupancy?

To determine if the regulations in this subpart apply to your activities, refer to Table 1 in this section.

TABLE 1

Applicability of this subpart	
If your proposed use of the public lands— ..... Includes occupancy and is "reasonably incident" as defined by this subpart.	Then— The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Involves the placement, construction, or maintenance of enclosures, gates, fences, or signs.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Is reasonably incident, but does not involve occupancy.	The provisions of this subpart do not apply to you, except for §§ 3715.4, 3715.5 and 3715.7. You are subject to the applicable regulations in 43 CFR part 3800.
Is <i>not</i> reasonably incident (involving rights-of-way, for example), but may be allowed under the public land laws.	The occupancy consultation provisions of this subpart do not apply to you. Your use is not allowed under this subpart. You must seek authorization under 43 CFR Group 2900.
Is not allowed under the public land laws, the mining laws, the mineral leasing laws, or other applicable laws.	Your use is prohibited. You must not begin or continue unauthorized uses.
Involves occupancy of a site, or any subsequent site within a 25-mile radius of the initially occupied site, for 14 days or less in any 90-day period.	The provisions of this subpart do not apply to you. Refer to the applicable regulations in 43 CFR part 8360 and pertinent State Director supplementary rules. 43 CFR part 8360 will not otherwise apply to a reasonably incident use or occupancy that this subpart allows.

**§ 3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?**

In order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site, you must be engaged in certain activities. Those activities that are the reason for your occupancy must:

- (a) Be reasonably incident;
- (b) Constitute substantially regular work;
- (c) Be reasonably calculated to lead to the extraction and beneficiation of minerals;
- (d) Involve observable on-the-ground activity that BLM may verify under § 3715.7; and
- (e) Use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

**§ 3715.2–1 What additional characteristic(s) must my occupancy have?**

In addition to the requirements specified in § 3715.2, your occupancy must involve one or more of the following:

- (a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss;
- (b) Protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy;
- (c) Protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety;

- (d) Protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or
- (e) Being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length. A full shift is ordinarily 8 hours and does not include travel time to the site from a community or area in which housing may be obtained.

**§ 3715.2–2 How do I justify occupancy by a caretaker or watchman?**

If you assert the need for a watchman or caretaker to occupy the public lands to protect valuable or hazardous property, equipment, or workings, you must show that the need for the occupancy is both reasonably incident and continual. You must show that a watchman or caretaker is required to be present either whenever the operation is not active or whenever you or your workers are not present on the site.

**§ 3715.2–3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?**

BLM may allow temporary occupancy at a single site to extend beyond the 14-day period described in § 3715.1 if you need to secure the site beyond 14 days through the use of a watchman as allowed by § 3715.2–2, and you have begun consultation with BLM under § 3715.3. If BLM decides not to concur in the occupancy, the temporary occupancy must stop.

**§ 3715.3 Must I consult with BLM before occupancy?**

Before beginning occupancy, you must consult with BLM about the requirements of this subpart. See Table 2 in this section.

TABLE 2

Consultation requirements	
If you are proposing a use that would involve occupancy.	Then.
Under a plan of operations or a modification submitted under 43 CFR part 3800, subpart 3802 or subpart 3809.	You must include in the proposed plan of operations the materials required by § 3715.3–2 describing any proposed occupancy for BLM review concurrently with review of the plan of operation.

TABLE 2—Continued

Consultation requirements	
Under the notice provisions of 43 CFR part 3800, subpart 3809.	BLM will determine whether you have complied with the requirements of this subpart together with its decision approving or modifying the plan. You must submit the materials required by § 3715.3–2 together with the materials submitted under 43 CFR 3809.1–3 for BLM review concurrently with its review of the proposed activity. Any activities in the notice that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
And is a “casual use” under 43 CFR 3809.1–2 or does not require a plan of operations under 43 CFR 3802.1–2 and 3809.1–4 or a notice under 43 CFR 3809.1–3.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM.  Any casual use activities that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
Or enclosures, fences, gates, or signs intended to exclude the general public.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM.

**§ 3715.3–1 At what point may I begin occupancy?**

You must not begin occupancy until—

(a) You have complied with either 43 CFR part 3800, subpart 3802 or 3809 and this subpart, and BLM has completed its review and made the required determinations under the applicable subparts, and

(b) You have obtained all federal, state and local mining, reclamation, and waste disposal permits, approvals, or other authorizations for the particular use or occupancy as required under this subpart.

**§ 3715.3–2 What information must I provide to BLM about my proposed occupancy?**

You must give BLM a detailed map that identifies the site and the placement of the items specified in paragraphs (c), (d), and (e) of this section, and a written description of the proposed occupancy that describes in detail:

(a) How the proposed occupancy is reasonably incident;

(b) How the proposed occupancy meets the conditions specified in § 3715.2 and § 3715.2–1;

(c) Where you will place temporary or permanent structures for occupancy;

(d) The location of and reason you need enclosures, fences, gates, and signs intended to exclude the general public;

(e) The location of reasonable public passage or access routes through or around the area to adjacent public lands; and

(f) The estimated period of use of the structures, enclosures, fences, gates, and signs, as well as the schedule for removal and reclamation when operations end.

**§ 3715.3–3 How does BLM process the information I submit about my proposed occupancy?**

BLM will review all proposed occupancies and all proposed enclosures, fences, gates, or signs intended to exclude the general public to determine if your proposed occupancy or use will conform to the provisions of §§ 3715.2, 3715.2–1 and 3715.5. BLM will complete its review of a proposed occupancy not involving a plan of operations within 30 business days of receipt of the materials, unless it concludes that the determination cannot be made until:

(a) 30 business days after it prepares necessary environmental documents, and

(b) 30 business days after it has complied with section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes, if applicable.

**§ 3715.3–4 How will BLM notify me of the outcome of its review process?**

At the conclusion of the review, BLM will make a written determination of concurrence or non-concurrence, and

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will send it to you. For operations conducted under a plan of operations, BLM will include this written determination in the decision that approves, modifies, or rejects the plan.

#### **§ 3715.3-5 What will BLM's notification include?**

(a) BLM will include in each determination of concurrence a statement requiring you to continue to comply with §§ 3715.2, 3715.2-1 and 3715.5.

(b) BLM will specify in each determination of non-concurrence how the proposed occupancy fails to meet the conditions of § 3715.2, § 3715.2-1 or § 3715.5, and will provide you an opportunity to modify the proposed occupancy or appeal the determination under § 3715.9.

#### **§ 3715.3-6 May I begin occupancy if I have not received concurrence from BLM?**

If you have not received concurrence from BLM, you must not begin occupancy even though you have submitted, or plan to submit, an amended occupancy proposal or an appeal.

#### **§ 3715.4 What if I have an existing use or occupancy?**

(a) By August 18, 1997, all existing uses and occupancies must meet the applicable requirements of this subpart. If not, BLM will either issue you a notice of noncompliance or order any existing use or occupancy failing to meet the requirements of this subpart to suspend or cease under § 3715.7-1. BLM will also order you to reclaim the land under 43 CFR part 3800, subpart 3802 or 3809 to BLM's satisfaction within a specified, reasonable time, unless otherwise expressly authorized.

(b) If you are occupying the public lands under the mining laws on August 15, 1996, you may continue your occupancy for one year after that date, without being subject to the procedures this subpart imposes, if:

(1) You notify BLM by October 15, 1996 of the existence of the occupancy using a format specified by BLM; and

(2) BLM has no pending trespass action against you concerning your occupancy.

(c) The one-year grace period provided in paragraph (b) of this section

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will not apply if at any time BLM determines that your use or occupancy is not reasonably incident and the continued presence of the use or occupancy is a threat to health, safety or the environment. In this situation, BLM will order an immediate temporary suspension of activities under § 3715.7-1(a).

(d) If you have no existing occupancies, but are engaged in uses of the public lands under the mining law, you are subject to the standards in § 3715.5. BLM will determine if your existing uses comply with those standards during normal inspection visits to the area and during BLM review of notices and plans of operations filed under 43 CFR part 3800.

#### **§ 3715.4-1 What happens after I give BLM written notification of my existing occupancy?**

(a) BLM will visit your site during the normal course of inspection to obtain the information described in § 3715.3-2. After the visit, BLM will make a determination of concurrence or non-concurrence.

(b) You must provide the information described in § 3715.3-2 to BLM. You may provide it either in writing or verbally during a site visit by BLM field staff.

#### **§ 3715.4-2 What if I do not notify BLM of my existing occupancy?**

If you do not provide the written notice required in § 3715.4, you will be subject to the enforcement actions of § 3715.7-1, the civil remedies of § 3715.7-2, and the criminal penalties of § 3715.8.

#### **§ 3715.4-3 What if BLM does not concur in my existing use or occupancy?**

If BLM determines that all or any part of your existing use or occupancy is not reasonably incident:

(a) BLM may order a suspension or cessation of all or part of the use or occupancy under § 3715.7-1;

(b) BLM may order the land to be reclaimed to its satisfaction and specify a reasonable time for completion of reclamation under 43 CFR part 3800; and

(c) BLM may order you to apply within 30 days after the date of notice

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from BLM for appropriate authorization under the regulations in 43 CFR Group 2900.

### **§ 3715.4-4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?**

BLM may defer a determination of concurrence or non-concurrence with your occupancy until the underlying fee simple title to the land has been finally determined by the Department of the Interior. During this time, your existing occupancy may continue, subject to § 3715.5(a).

### **§ 3715.5 What standards apply to my use or occupancy?**

(a) Your use or occupancy must be reasonably incident. In all uses and occupancies, you must prevent or avoid “unnecessary or undue degradation” of the public lands and resources.

(b) Your uses must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under 43 CFR part 3800.

(c) Your occupancies must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under this subpart and 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under this subpart and 43 CFR part 3800.

(d) If your prospecting or exploration activities involve only surface activities, you must not place permanent structures on the public lands. Any temporary structures you place on the public lands during prospecting or ex-

ploration will be allowed only for the duration of the activities, unless BLM expressly and in writing allows them to remain longer. If your prospecting or exploration activities involve subsurface activities, you may place permanent structures on the public lands, if BLM concurs.

(e) All permanent and temporary structures you place on the public lands must conform with the applicable state or local building, fire, and electrical codes, and occupational safety and health and mine safety standards. If state or local codes require, you must obtain a certificate of occupancy or its equivalent before you begin use or occupancy involving permanent structures. If state or local law requires, you must also acquire appropriate sewerage and sanitation permits before the occupancy or use of a permanent structure placed on the public lands.

### **§ 3715.5-1 What standards apply to ending my use or occupancy?**

Unless BLM expressly allows them in writing to remain on the public lands, you must remove all permanent structures, temporary structures, material, equipment, or other personal property placed on the public lands during authorized use or occupancy under this subpart. You have 90 days after your operations end to remove these items. If BLM concurs in writing, this provision will not apply to seasonal operations that are temporarily suspended for less than one year and expected to continue during the next operating season or to operations that are suspended for no longer than one year due to market or labor conditions.

### **§ 3715.5-2 What happens to property I leave behind?**

Any property you leave on the public lands beyond the 90-day period described in § 3715.5-1 becomes property of the United States and is subject to removal and disposition at BLM’s discretion consistent with applicable laws and regulations. You are liable for the costs BLM incurs in removing and disposing of the property.

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### **§ 3715.6 What things does BLM prohibit under this subpart?**

Except where other applicable laws or regulations allow, BLM prohibits the following:

(a) Placing, constructing, maintaining or using residences or structures for occupancy not meeting:

(1) The conditions of occupancy under §§ 3715.2 or 3715.2-1; or

(2) Any of the standards of occupancy under § 3715.5;

(b) Beginning occupancy before the filing, review, and approval or modification of a plan of operation as required under 43 CFR part 3800, subparts 3802 or 3809;

(c) Beginning occupancy before consultation with BLM as required by § 3715.3 for activities that do not require a plan of operations under 43 CFR part 3800, subpart 3802 or that are defined as casual use or notice activities under 43 CFR part 3800, subpart 3809;

(d) Beginning occupancy without receiving a determination of concurrence because the proposed occupancy or fencing will not conform to the provisions of § 3715.2, § 3715.2-1 or § 3715.5;

(e) Not complying with any order issued under this subpart within the time frames the order provides;

(f) Preventing or obstructing free passage or transit over or through the public lands by force, threats, or intimidation; provided, however, that reasonable security and safety measures in accordance with this subpart are allowed;

(g) Placing, constructing, or maintaining enclosures, gates, or fences, or signs intended to exclude the general public, without BLM's concurrence;

(h) Causing a fire or safety hazard or creating a public nuisance;

(i) Not complying with the notification and other requirements under § 3715.4 relating to an existing occupancy; and

(j) Conducting activities on the public lands that are not reasonably incident, including, but not limited to: non-mining related habitation, cultivation, animal maintenance or pasturage, and development of small trade or manufacturing concerns; storage, treatment, processing, or disposal of non-mineral, hazardous or toxic materials or waste that are generated else-

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where and brought onto the public lands; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; searching for buried treasure, treasure trove or archaeological specimens; operating hobby and curio shops; cafes; tourist stands; and hunting and fishing camps.

### **§ 3715.7 How will BLM inspect my use or occupancy and enforce this subpart?**

(a) BLM field staff is authorized to physically inspect all structures, equipment, workings, and uses located on the public lands. The inspection may include verification of the nature of your use and occupancy to ensure that your use or occupancy is, or continues to be, reasonably incident and in compliance with §§ 3715.2, 3715.2-1, 3715.4-1 and 3715.5.

(b) BLM will not inspect the inside of structures used solely for residential purposes, unless an occupant or a court of competent jurisdiction gives permission.

### **§ 3715.7-1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?**

BLM has four types of orders that it can issue depending on the circumstances:

(a) *Immediate suspension.* (1) BLM may order an immediate, temporary suspension of all or any part of your use or occupancy if:

(i) All or part of your use or occupancy is not reasonably incident or is not in compliance with §§ 3715.2, 3715.2-1, 3715.3-1(b), 3715.5 or 3715.5-1, and

(ii) an immediate, temporary suspension is necessary to protect health, safety or the environment.

(2) BLM will presume that health, safety or the environment are at risk and will order your use or occupancy to be immediately and temporarily suspended if:

(i) You are conducting an occupancy under a determination of concurrence under this section; and

(ii) You fail at any time to meet any of the standards in § 3715.3-1(b) or § 3715.5(b), (c), or (e).

(3) The suspension order will describe—



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(i) How you are failing or have failed to comply with the requirements of this subpart; and

(ii) The actions, in addition to suspension of the use or occupancy, that you must take to correct the noncompliance and the time by which you must suspend the use or occupancy. It will also describe the time, not to exceed 30 days, within which you must complete corrective action.

(4) The suspension order will not be stayed by an appeal.

(b) *Cessation order.* (1) BLM may order a temporary or permanent cessation of all or any part of your use or occupancy if:

(i) All or any part of your use or occupancy is not reasonably incident but does not endanger health, safety or the environment, to the extent it is not reasonably incident;

(ii) You fail to timely comply with a notice of noncompliance issued under paragraph (c) of this section;

(iii) You fail to timely comply with an order issued under paragraph (d) of this section; or

(iv) You fail to take corrective action during a temporary suspension ordered under paragraph (a) of this section.

(2) The cessation order will describe—

(i) The ways in which your use or occupancy is not reasonably incident; is in violation of a notice of noncompliance issued under paragraph (c) of this section; or is in violation of an order issued under paragraphs (a) or (d) of this section, as appropriate;

(ii) The actions, in addition to cessation of the use or occupancy, that you must take to correct the noncompliance;

(iii) The time by which you must cease the use or occupancy, not to exceed 30 days from the date the Interior Board of Land Appeals affirms BLM's order; and

(iv) The length of the cessation.

(c) *Notice of noncompliance.* (1) If your use or occupancy is not in compliance with any requirements of this subpart, and BLM has not invoked paragraph (a) of this section, BLM will issue an order that describes—

(i) How you are failing or have failed to comply with the requirements of this subpart;

(ii) The actions that you must take to correct the noncompliance and the time, not to exceed 30 days, within which you must start corrective action; and

(iii) The time within which you must complete corrective action.

(2) If you do not start and complete corrective action within the time allowed, BLM may order an immediate suspension under paragraph (a) of this section, if necessary, or cessation of the use or occupancy under paragraph (b) of this section.

(d) *Other.* If you are conducting an activity that is not reasonably incident but may be authorized under 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560, BLM may order you to apply within 30 days from the date you receive the order for authorization under the listed regulations.

[61 FR 37125, July 16, 1996, as amended at 62 FR 59822, Nov. 5, 1997]

### § 3715.7-2 What happens if I do not comply with a BLM order?

If you do not comply with a BLM order issued under § 3715.7-1, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to prevent you from using or occupying the public lands in violation of the regulations of this subpart. This relief may be in addition to the enforcement actions described in § 3715.7-1 and the penalties described in § 3715.8.

### § 3715.8 What penalties are available to BLM for violations of this subpart?

The penalties for individuals and organizations are as follows:

(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)) and/or section 4 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1064). If you are convicted, you will be subject to a fine of not more than \$100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment

## **§ 3715.8-1**

not to exceed 12 months, or both, for each offense.

(b) *Organizations.* If an organization or corporation knowingly or willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will be subject to a fine of not more than \$200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

### **§ 3715.8-1 What happens if I make false statements to BLM?**

You are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal or cover up by any trick, scheme or device a material fact, or make any false, fictitious or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious or fraudulent statement or entry. If you are convicted, you will be fined not more than \$250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned not more than 5 years, or both.

### **§ 3715.9 What appeal rights do I have?**

If you are adversely affected by a BLM decision, order or determination made under this subpart, you may appeal the decision, order or determination to the Interior Board of Land Appeals (IBLA) under the provisions of 43 CFR part 4.

### **§ 3715.9-1 Does an appeal to IBLA suspend a BLM decision?**

(a) An appeal to IBLA does not suspend an order requiring an immediate, temporary suspension of occupancy issued under § 3715.7-1(a) before the appeal or while it is pending. In this case, the provisions of 43 CFR 4.21(a) do not apply.

(b) The provisions of 43 CFR 4.21(a) apply to all other BLM decisions, orders or determinations under this subpart.

## **PART 3720 [RESERVED]**

## **43 CFR Ch. II (10-1-10 Edition)**

## **PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL**

### **Subpart 3730—Public Law 359; Mining in Powersite Withdrawals: General**

Sec.

3730.0-1 Purpose; lands open.

3730.0-3 Authority.

3730.0-9 Information collection.

### **Subpart 3731—Power Rights**

3731.1 Power rights retained in the United States.

### **Subpart 3732—Withdrawals Other Than for Powersite Purposes**

3732.1 Act ineffective as to other withdrawals.

### **Subpart 3733—Risk of Operation**

3733.1 Financial risk of operation.

3733.2 Liability of United States.

### **Subpart 3734—Location and Assessment Work**

3734.1 Owner of claim to file notice of location and assessment work.

### **Subpart 3735—Prior Existing Mining Locations**

3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

### **Subpart 3736—Mining Operations**

3736.1 Placer locator to conduct no mining operations for 60 days.

3736.2 Hearing; notice of protest.

### **Subpart 3737—Use**

3737.1 Mining claim and millsite use.

### **Subpart 3738—Surface Protection Requirements**

3738.1 Bond or deposit required.

3738.2 Restoration of surface condition.

AUTHORITY: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28f-k; 30 U.S.C. 621-625; 43 U.S.C. 1201; 43 U.S.C. 1740; 43 U.S.C. 1744.